

## RULES FOR PROCEEDINGS UNDER 28 U.S.C. § 2255

Present Rules	Restyled Rules
Rule 1. Scope of Rules	Rule 1. Scope
<p>These rules govern the procedure in the district court on a motion under 28 U.S.C. § 2255:</p> <p>(1) by a person in custody pursuant to a judgment of that court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack; and</p>	<p>These rules govern a motion filed in a United States district court under 28 U.S.C. § 2255 by:</p> <p>(a) a person in custody under a judgment of that court who seeks a determination that:</p> <ul style="list-style-type: none"> <li>(1) the judgment violates the Constitution or laws of the United States;</li> <li>(2) the court lacked jurisdiction to enter the judgment;</li> <li>(3) the sentence exceeded the maximum allowed by law; or</li> <li>(4) the judgment or sentence is otherwise subject to collateral review; and</li> </ul>

<p>(2) by a person in custody pursuant to a judgment of a state or other federal court and subject to future custody under a judgment of the district court for a determination that such future custody will be in violation of the Constitution or laws of the United States, or that the district court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.</p>	<p><b>(b)</b> a person in custody under a judgment of a state court or another federal court, and subject to future custody under a judgment of the district court, who seeks a determination that:</p> <ul style="list-style-type: none"> <li>(1) future custody under a judgment of the district court would violate the Constitution or laws of the United States;</li> <li>(2) the district court lacked jurisdiction to enter the judgment;</li> <li>(3) the district court's sentence exceeded the maximum allowed by law; or</li> <li>(4) the district court's judgment or sentence is otherwise subject to collateral review.</li> </ul>
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#### **COMMITTEE NOTE**

The language of Rule 1 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 2. Motion	Rule 2. The Motion
<p><b>(a) Nature of application for relief.</b> If the person is presently in custody pursuant to the federal judgment in question, or if not presently in custody may be subject to such custody in the future pursuant to such judgment, the application for relief shall be in the form of a motion to vacate, set aside, or correct the sentence.</p>	<p><b>(a) Applying for Relief.</b> The application must be in the form of a motion to vacate, set aside, or correct the sentence.</p>
<p><b>(b) Form of Motion.</b> The motion shall be in substantially the form annexed to these rules, except that any district court may by local rule require that motions filed with it shall be in a form prescribed by the local rule. Blank motions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The motion shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.</p>	<p><b>(b) Form.</b> The motion must:</p> <ol style="list-style-type: none"> <li>(1) specify all the grounds for relief available to the moving party;</li> <li>(2) briefly summarize the facts supporting each ground;</li> <li>(3) state the relief requested;</li> <li>(4) be typewritten or legibly handwritten; and</li> <li>(5) be signed under penalty of perjury.</li> </ol> <p><b>(c) Standard Form.</b> The motion must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make blank forms available to moving parties without charge.</p>
<p><b>(c) Motion to be directed to one judgment only.</b> A motion shall be limited to the assertion of a claim for relief against one judgment only of the district court. If a movant desires to attack the validity of other judgments of that or any other district court under which he is in custody or may be subject to future custody, as the case may be, he shall do so by separate motions.</p>	<p><b>(d) Separate Motions for Separate Judgments.</b> A moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.</p>

<p><b>(d) Return of insufficient motion.</b> If a motion received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the movant, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the motion.</p>	
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### COMMITTEE NOTE

The language of Rule 2 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

Revised Rule 2(b)(5) has been amended by removing the requirement that the motion be signed personally by the moving party. As reflected in 28 U.S.C. § 2242, an application for habeas corpus relief may be filed by the person who is seeking relief, or by someone acting on behalf of that person.

The language in new Rule 2(c) has been changed to reflect that a moving party must substantially follow the standard form, which is appended to the rules, or a form provided by the court. The current rule, Rule 2(c), seems to indicate a preference for the standard “national” form. Under the amended rule, there is no stated preference. The Committee understood that current practice in some courts is that if the moving party first files a motion using the national form, that courts may ask the moving party to supplement it with the local form.

Current Rule 2(d), which provided for returning an insufficient motion has been deleted. The Committee believed that the approach in Federal Rule of Civil Procedure 5(e) was more appropriate for dealing with motions that do not conform to the form requirements of the rule. That Rule provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the motion was deemed insufficient. Now that a one-year statute of limitations applies to motions filed under § 2255, *see* 28 U.S.C. § 2244(d)(1), the court’s dismissal of a motion because it is not in proper form may pose a significant penalty for a moving party, who may not be able to file another motion within the one-year limitation period. Now, under revised Rule 3(b), the clerk is required to file a motion, even though it may otherwise fail to comply with the provisions in revised Rule 2(b). The Committee believed that the better procedure was to accept the defective motion and require the moving party to submit a corrected motion that conforms to Rule 2(b).

Rule 3. Filing Motion	Rule 3. Filing the Motion; Inmate Filing
<p><b>(a) Place of filing; copies.</b> A motion under these rules shall be filed in the office of the clerk of the district court. It shall be accompanied by two conformed copies thereof.</p>	<p><b>(a) Where to File; Copies.</b> An original and two copies of the motion must be filed with the clerk.</p>
<p><b>(b) Filing and service.</b> Upon receipt of the motion and having ascertained that it appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the motion and enter it on the docket in his office in the criminal action in which was entered the judgment to which it is directed. He shall thereupon deliver or serve a copy of the motion together with a notice of its filing on the United States Attorney of the district in which the judgment under attack was entered. The filing of the motion shall not require said United States Attorney to answer the motion or otherwise move with respect to it unless so ordered by the court.</p>	<p><b>(b) Filing and Service.</b> The clerk must file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The clerk must then deliver or serve a copy of the motion on the United States attorney in that district, together with a notice of its filing.</p> <p><b>(c) Time to File.</b> The time for filing a motion is governed by 28 U.S.C. § 2255 ¶ 6.</p> <p><b>(d) Inmate Filing.</b> A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.</p>

### COMMITTEE NOTE

The language of Rule 3 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 3(b) is new and is intended to parallel Federal Rule of Civil Procedure 5(e), which provides that the clerk may not refuse to accept a filing solely for the reason that it fails to

comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the petition was deemed insufficient. That Act, however, added a one-year statute of limitations to motions filed under § 2255, *see* 28 U.S.C. § 2244(d)(1). Thus, a court's dismissal of a defective motion may pose a significant penalty for a moving party who may not be able to file a corrected motion within the one-year limitation period. The Committee believed that the better procedure was to accept the defective motion and require the moving party to submit a corrected motion that conforms to Rule 2. Thus, revised 3(b) requires the clerk is required to file a motion, even though it may otherwise fail to comply with Rule 2.

Revised Rule 3(c), which sets out a specific reference to 28 U.S.C. § 2255, paragraph 6, is new and has been added to put moving parties on notice that a one-year statute of limitations applies to motions filed under these Rules.

Rule 3(d) is new and provides guidance on determining whether a motion from an inmate is considered to have been filed in a timely fashion. The new provision parallels Federal Rule of Appellate Procedure 25(a)(2)(C).

<b>Rule 4. Preliminary Consideration by Judge</b>	<b>Rule 4. Preliminary Review</b>
<p><b>(a) Reference to judge; dismissal or order to answer.</b> The original motion shall be presented promptly to the judge of the district court who presided at the movant's trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant. If the appropriate judge is unavailable to consider the motion, it shall be presented to another judge of the district in accordance with the procedure of the court for the assignment of its business.</p>	<p><b>(a) Referral to Judge.</b> The clerk must promptly forward the motion to the judge who conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court's assignment procedure.</p>
<p><b>(b) Initial consideration by judge.</b> The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.</p>	<p><b>(b) Initial Consideration by Judge.</b> The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the government to file an answer or other pleading within a fixed time, or to take other action the judge may order.</p>

#### **COMMITTEE NOTE**

The language of Rule 4 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 5. Answer; Contents	Rule 5. The Answer and the Reply
<p><b>(a) Contents of answer.</b> The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available federal remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules. The answer shall also state whether an evidentiary hearing was accorded the movant in a federal court.</p>	<p><b>(a) When Required.</b> The respondent is not required to answer the motion — or move with respect to it — unless a judge so orders.</p> <p><b>(b) Addressing the Allegations; Other Remedies.</b> The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.</p>
<p><b>(b) Supplementing the answer.</b> The court shall examine its files and records to determine whether it has available copies of transcripts and briefs whose existence the answer has indicated. If any of these items should be absent, the government shall be ordered to supplement its answer by filing the needed records. The court shall allow the government an appropriate period of time in which to do so, without unduly delaying the consideration of the motion.</p>	<p><b>(c) Records of Prior Proceedings.</b> If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court’s records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings.</p> <p><b>(d) Reply.</b> The moving party may submit a reply to the respondent’s answer or other pleading within a time fixed by the judge.</p>

### COMMITTEE NOTE

The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the motion, unless a judge so orders, is taken from current Rule 3(b).

Finally, revised Rule 5(d) reflects the practice in some jurisdictions that the moving party has an opportunity to file a response, or other pleading, to the respondent’s answer. In that case, the



Rule prescribes that the court set the time for such responses. In lieu of setting specific time limits in each case, the court may decide to include such time limits in its local rules.

<b>Rule 6. Discovery</b>	<b>Rule 6. Discovery</b>
<b>(a) Leave of court required.</b> A party may invoke the processes of discovery available under the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a movant who qualifies for appointment of counsel under 18 U.S.C. § 3006A(g).	<b>(a) Leave of Court Required.</b> A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
<b>(b) Requests for discovery.</b> Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.	<b>(b) Requesting Discovery.</b> When requesting discovery, a party must include a statement of any interrogatories or requests for admission, and a list of any requested documents.
<b>(c) Expenses.</b> If the government is granted leave to take the deposition of the movant or any other person, the judge may as a condition of taking it direct that the government pay the expenses of travel and subsistence and fees of counsel for the movant to attend the taking of the deposition.	<b>(c) Deposition Expenses.</b> If the government is granted leave to take a deposition, the judge may require the government to pay the travel expenses, subsistence expenses, and fees of the moving party's attorney to attend the deposition.

### COMMITTEE NOTE

The language of Rule 6 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

<b>Rule 7. Expansion of Record</b>	<b>Rule 7. Expanding the Record</b>
<b>(a) Direction for expansion.</b> If the motion is not dismissed summarily, the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.	<b>(a) In General.</b> If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the merits of the motion. The judge may require the parties to authenticate these materials.
<b>(b) Materials to be added.</b> The expanded record may include, without limitation, letters predating the filing of the motion in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.	<b>(b) Types of Materials.</b> The materials that may be required include letters predating the filing of the motion, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits also may be submitted and considered as part of the record.
<p><b>(c) Submission to opposing party.</b> In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness.</p> <p><b>(d) Authentication.</b> The court may require the authentication of any material under subdivision (b) or (c).</p>	<b>(c) Review by the Opposing Party.</b> The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

#### COMMITTEE NOTE

The language of Rule 7 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

The language in current Rule 7(d), which deals with authentication of materials in the expanded record, has been moved to revised Rule 7(a).

Rule 8. Evidentiary Hearing	Rule 8. Evidentiary Hearing
<p><b>(a) Determination by court.</b> If the motion has not been dismissed at a previous stage in the proceeding, the judge, after the answer is filed and any transcripts or records of prior court actions in the matter are in his possession, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice dictates.</p>	<p><b>(a) Determining Whether to Hold a Hearing.</b> If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.</p>
<p><b>(b) Function of the magistrate.</b></p> <p>(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition.</p> <p>(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.</p> <p>(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.</p> <p>(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.</p>	<p><b>(b) Reference to a Magistrate Judge.</b> A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed finding of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 10 days after being served, a party may file objections as provided by local court rule. The judge must determine <i>de novo</i> any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.</p>

<p><b>(c) Appointment of counsel; time for hearing.</b> If an evidentiary hearing is required, the judge shall appoint counsel for a movant who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g) and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the proceeding if the interest of justice so requires.</p>	<p><b>(c) Appointing Counsel; Time of Hearing.</b> If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.</p>
<p><b>(d) Production of statements at evidentiary hearing.</b>  <b>(1) In General.</b> Federal Rule of Criminal Procedure 26.2(a)-(d), and (f) applies at an evidentiary hearing under these rules.  <b>(2) Sanctions for Failure to Produce Statement.</b> If a party elects not to comply with an order under Federal Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party, at the evidentiary hearing the court may not consider the testimony of the witness whose statement is withheld.</p>	<p><b>(d) Producing a Statement.</b> Federal Rule of Criminal Procedure 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a) order to produce a witness's statement, the court must not consider that witness's testimony.</p>

### COMMITTEE NOTE

The language of Rule 8 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The requirement in current Rule 8(b)(2) that a copy of the magistrate judge's findings must be promptly mailed to all parties has been changed in revised Rule 8(b) to require that copies of those findings be served on all parties. As used in this rule, requiring that the parties be "served" is consistent with Federal Rule of Civil Procedure 5(b), which may include mailing the copies.

Rule 9. Delayed or Successive Motions	Rule 9. Successive Motions
<p><b>(a) Delayed motions.</b> A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by delay in its filing unless the movant shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.</p>	
<p><b>(b) Successive motions.</b> A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.</p>	<p>Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion.</p>

### COMMITTEE NOTE

The language of Rule 9 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Current Rule 9(a) has been deleted as being unnecessary in light of the applicable one-year statute of limitations for § 2255 motions, added as part of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214.

The remainder of revised Rule 9 reflects provisions in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, which now require a moving party to obtain approval from the appropriate court of appeals before filing a second or successive motion. *See* 28 U.S.C. § 2255, paragraph 8.

Finally, the title of the rule has been changed to reflect the fact that the revised version addresses only the topic of successive motions.

<b>Rule 10. Powers of Magistrates</b>	<b>Rule 10. Powers of a Magistrate Judge</b>
The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.	If authorized to do so under 28 U.S.C. § 636, a magistrate judge may perform the duties of a district judge under these rules.

#### **COMMITTEE NOTE**

The language of Rule 10 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

<b>Rule 11. Time for Appeal</b>	<b>Rule 11. Time to Appeal</b>
The time for appeal from an order entered on a motion for relief made pursuant to these rules is as provided in Rule 4(a) of the Federal Rules of Appellate Procedure. Nothing in these rules shall be construed as extending the time to appeal from the original judgment of conviction in the district court.	Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. These rules do not extend the time to appeal the original judgment of conviction.

### **COMMITTEE NOTE**

The language of Rule 11 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

<b>Rule 12. Federal Rules of Criminal and Civil Procedure; Extent of Applicability</b>	<b>Rule 12. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure</b>
If no procedure is specifically prescribed by these rules, the district court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, whichever it deems most appropriate, to motions filed under these rules.	The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with these rules, may be applied to motions filed under these rules.

#### **COMMITTEE NOTE**

The language of Rule 12 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.